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Illinois Coverage Basics

Illinois Appellate Court Answers Two Important Questions about Coverage for Additional Insureds

Commercial general liability policies issued to subcontractors often contain "blanket" additional insured endorsements. These endorsements typically require that in order for an upstream party such as a general contractor to be covered as an additional insured, there must be a written contract or written agreement which requires the subcontractor to name the general contractor as an additional insured.

One question that can arise is whether there is a written contract or agreement that complies with these requirements. Recently, the Illinois Appellate Court held there was such an agreement, even though the agreement containing the requirement that the general contractor be added as an additional insured was unsigned, and even though the subcontractor's policy specifically required that the contract or agreement be "executed." The court nevertheless found the general contractor was entitled to coverage as an additional insured. *West Bend Mutual Ins. Co. v. DJW-Ridgeway Bldg. Consultants, Inc*., 2015 IL App (2d) 140441.

In *West Bend*, the general contractor, DJW-Ridgeway (Ridgeway), hired a subcontractor named Jason the Mason to perform work on a commercial office project. A worker was injured on the project and sued both Ridgeway and Jason. Ridgeway tendered its defense to West Bend as an additional insured under the CGL policy West Bend issued to Jason. West Bend denied coverage and filed a declaratory judgment action, claiming the only agreement signed by both parties was a two-page proposal, which did not contain any requirement that Jason name Ridgeway as an additional insured. Ridgeway, on the other hand, pointed to a three-page "subcontract agreement" (agreement) which did contain such a requirement, but was not signed by either party. Ridgeway argued the two documents should be construed together as a single contract. The trial court granted summary judgment in favor of Ridgeway, and the Appellate Court affirmed.

The court noted that the three-page agreement stated it was "supplemental to and a part of that certain signed proposal between [Ridgeway] and [Jason], to which it is attached." There was undisputed testimony that the two documents were attached to each other when Ridgeway's owner gave them to Jason, as well as evidence that Jason complied with a requirement in the three-page agreement to provide a certificate of insurance to Ridgeway. The court found the two documents were intended to comprise a single contract which required Jason to insure Ridgeway.

Another question that frequently arises is the scope of additional insured coverage available to a general contractor. In *Pekin Ins. Co. v. CSR Roofing Contractors*, 2015 IL App (1st) 142473, the

Appellate Court found a general contractor was entitled to coverage as an additional insured even though there were no allegations of direct negligence against the subcontractor. In so doing, the court further demonstrated the scope and reach of *Pekin Ins. Co. v. Wilson*, 237 Ill.2d 446 (2010).

In *Pekin v. CSR Roofing*, Pekin issued a CGL policy to Zamastil Exteriors, the roofing subcontractor on a project in which CSR Roofing was the general contractor. An employee of Zamastil was injured in a fall from a roof during the project. The employee sued CSR, and did not name Zamastil as a defendant. CSR tendered its defense to Pekin, which denied coverage and filed a declaratory judgment action. Pekin's policy contained an additional insured endorsement which by its terms limited coverage for additional insureds only to vicarious liability imputed to CSR as a proximate result of Zamastil's operations performed for CSR. The CSR-Zamastil subcontract, by contrast, specifically stated that Zamastil's insurance coverage for CSR "must NOT be limited to vicarious liability."

Pekin argued it had no duty to defend because the underlying complaint alleged only direct negligence on the part of CSR. CSR argued the court was required under *Pekin v. Wilson* and subsequent cases to construe the Pekin endorsement and the subcontract together in determining whether Pekin owed a duty to defend, and that when so construed, the two documents created an ambiguity that must be construed in favor of coverage. Alternatively, CSR argued the underlying complaint left open the possibility that CSR could be held vicariously liable for Zamastil's negligence, and thus fell within the limited scope of coverage provided by the Pekin endorsement. The trial court ruled in favor of Pekin, and CSR appealed.

The Appellate Court reversed. The court held the underlying complaint, construed together with the subcontract, left open the possibility that CSR could be held vicariously liable for Zamastil's negligence, even though Zamastil was not named as a defendant. The court found the mere fact that there were no allegations of direct negligence against Zamastil was not conclusive under *Wilson*. Rather, the court pointed to allegations in the complaint which suggested that Zamastil rather than CSR could have been the party at fault. The complaint and subcontract did not preclude the possibility that CSR could be held liable solely as a result of Zamastil's failure to follow safety regulations. Accordingly, the Court found that Pekin had a duty to defend CSR.

From these two cases, we now know that the absence of a signature on a construction contract is not necessarily a barrier to a general contractor that seeks coverage as an additional insured, in spite of the typical "where required in a written contract or written agreement" language. Similarly, the fact that there are no direct allegations of negligence against the subcontractor is not necessarily a barrier to additional insured coverage for a general contractor, even where the scope of coverage under the subcontractor's policy appears to be restricted to vicarious liability. These results bode well, at least for the time being, for general contractors (and just as important, their insurers) in Illinois.

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